

**VOLUNTARY CLEANUP CONTRACT
18-6507-RP**

**IN THE MATTER OF
GE SPARTANBURG PROJECT SITE, SPARTANBURG COUNTY
and
TRANSPORT POOL CORPORATION**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and Transport Pool Corporation, pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760, as amended, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 to 9675, as amended, and the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-200, with respect to the facility known as the GE Spartanburg Project Site ("Site"). The Transport Pool Corporation property is located at 375 West Main Street, Spartanburg, South Carolina ("Property"). The Property includes approximately 1.17 acres and is bounded generally by West Main Street on the north; South Forest Street on the west; South Walker Street on the east; and commercial properties and West Henry Street on the south. The Property is identified by the County of Spartanburg as Tax Map Serial Number 7-12-13-310.00. A legal description of the Property is attached to this Contract as Appendix A.

DEFINITIONS

1. Unless otherwise expressly provided, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, and if not set forth therein, shall have the meaning assigned to them pursuant to CERCLA, the HWMA, and in regulations promulgated under these statutes.

- A. "TPC" shall mean Transport Pool Corporation. Transport Pool Corporation is a foreign corporation with its place of business located at c/o General Electric Company, 801 Main Avenue, Mail Stop 4065G, Norwalk, CT 06856.
- B. "Contamination" shall mean impact by a Pollutant or Contaminant,

Petroleum and Petroleum Product, or Hazardous Substance.

- C. "Contract" shall mean this Responsible Party Voluntary Cleanup Contract.
- D. "Department" shall mean the South Carolina Department of Health and Environmental Control or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- E. "Execution Date" shall mean that date on which the last of the parties signs this Contract.
- F. "Hazardous Substance" shall have the same meaning as defined under subparagraphs (A) through (F) of Paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601(14).
- G. "Petroleum" and "Petroleum Product" shall mean crude oil or any fraction of crude oil, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds for each square inch absolute), including any liquid, which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel.
- H. "Pollutant" or "Contaminant" includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in organisms or their offspring; "contaminant" does not include petroleum, including crude oil or any fraction of crude oil, which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of CERCLA § 101, 42 U.S.C. § 9601, et seq. and

does not include natural gas, liquefied natural gas, or synthetic gas of pipeline quality or mixtures of natural gas and such synthetic gas.

- I. "Property" as described in the legal description attached as Appendix A, shall mean that portion of the Site, which is subject to ownership, prospective ownership, or possessory or contractual interest of TPC.
- J. "Response Action" shall mean any assessment, cleanup, inspection, or closure of a site as necessary to remedy actual or potential damage to public health, public welfare, or the environment.
- K. "Site" shall mean all areas where a Hazardous Substance, Petroleum, Petroleum Product, Pollutant or Contaminant has been released, deposited, stored, disposed of, or placed, or otherwise comes to be located as a result of TPC, or previous owner/operator's activities at the Property; "Site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA.
- L. "Voluntary Cleanup" shall mean a Response Action taken under and in compliance with the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 to 760, as amended.
- M. "Work Plan" shall mean the plan for additional Response Actions to be conducted at the Site as described in Paragraph 3 of this Contract.

FINDINGS

2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. From the historical information reviewed, the Property was developed residentially from at least 1912 through the 1940's. Commercial development began in at least the mid 1940's. A business selling used autos occupied the eastern portion of the Property from at least the early 1950's through the late 1960's. A

finance company was located on the Property in the 1960's and 1970's. Additionally, a laundry with a boiler room occupied the building that was centrally located on the Property from at least the mid to late 1960's. A previous Phase I indicated that C&W Printing also occupied the building that was centrally located on the Property in the 1960's; however, this information could not be verified. A pool contractor occupied the Property in the mid 1980's, and a used car dealership in the late 1980's. A jewelry outlet occupied the former Property building in 1992. The former buildings on the Property reportedly were demolished in 1992 and the current structure on the Property was constructed in 1992. The current structure has reportedly been occupied by a Hardees restaurant but is currently vacant.

- B. The historical use of nearby properties may have also contributed to the impacts to the soil and groundwater on the Property. The nearby properties include former gasoline stations located upgradient to the northwest (Buddy Service Center located at 368 West Main Street), and west (Fast Stop located at 401 West Main Street and Dave's Service Center located at 417 West Main Street). Former laundry facilities also were located to the north (George's Maytag Laundromat at 362 West Main Street) and west (Fowler Brothers Cleaners and Laundry located at 422 West Main Street, 540 feet west of the Property), with Fowler Brothers Cleaners and Laundry operating at that location from at least the mid 1960's through 2008.
- C. S&ME, Inc. completed a Phase I ESA dated May 1992 on the Property. The two structures identified in the May 1992 Phase I ESA were demolished in May/June of 1992 during the redevelopment of the Property as a Hardee's Restaurant. A 1,000-gallon diesel UST was discovered on the Property during redevelopment. The UST was reportedly closed by removal from the Property in June 1992 and a release was subsequently reported to the Department.

- D. The Property is currently being managed as a state-led Site in in the Department's UST program (UST Permit #14887).
- E. A Tier II Assessment Report, prepared by Petra Tech Environmental, LLC (Petra Tech) dated October 8, 2015, indicated that twenty-three groundwater monitoring wells (MW-1 through MW-19, and MW-21 through MW-24) are currently associated with this site (UST Permit #14887) and range in depths from 30 feet below ground surface (bgs) to 47 feet bgs. Nine groundwater monitoring wells are located within the Property boundaries and 14 groundwater monitoring wells are located on adjoining properties.
- F. On January 29, 2016, ENERCON performed a limited groundwater sampling event of the nine monitoring wells located on the Property (MW-1 through MW-8, and MW-12). During the monitoring event, groundwater was gauged and a groundwater sample was collected from all of the currently-existing monitoring wells located within the Property limits.
 - i. Seven of the nine groundwater samples collected at the Property (MW-1 through MW-5, MW-8, and MW-12) during the January 2016 event did not detect benzene, toluene, ethylbenzene, and xylenes (BTEX) above laboratory detection limits. However, monitoring wells MW-6 and MW-7 identified benzene at levels of 190 micrograms per liter ($\mu\text{g/L}$) and 38 $\mu\text{g/L}$, respectively, which is above the Maximum Contaminant Level (MCL) for benzene (5 $\mu\text{g/L}$).
 - ii. Methyl tert-butyl ether (MTBE), a gasoline additive, was detected in all nine of the groundwater samples analyzed, with the highest concentration observed in MW-3 at 1,600 $\mu\text{g/L}$.
 - iii. Additionally, chlorinated hydrocarbons were detected in groundwater samples from four of the nine monitoring wells. Tetrachloroethene (PCE) was detected in MW-1, MW-2, MW-3, and MW-12 at 4.4 $\mu\text{g/L}$, 8.6 $\mu\text{g/L}$, 2.0 $\mu\text{g/L}$, and 110 $\mu\text{g/L}$

respectively. Trichloroethene (TCE) and cis-1,2-dichloroethene (cis-1,2-DCE) were also detected in MW-12 at a concentration of 8.3 µg/L and 2.2 µg/L, respectively. The concentrations of PCE detected in wells MW-2 and MW-12 and the concentration of TCE detected in MW-12 are all above the MCL for PCE and TCE, which is 5 µg/L.

RESPONSE ACTIONS

3. TPC agrees to submit to the Department, for review and written approval within thirty (30) days of the Execution Date of this Contract, a Work Plan for the Site that is consistent with the technical intent of the National Contingency Plan. The Work Plan shall be implemented upon written approval from the Department. The Work Plan shall include the names, addresses, and telephone numbers of the consulting firm, the analytical laboratory certified by the Department, and TPC's contact person for matters relating to this Contract. TPC will notify the Department in writing of changes in the contractor or laboratory. The Department will review the Work Plan and will notify TPC in writing of any deficiencies in the Work Plan, and TPC will respond in writing to the Department's comments within thirty (30) days. The Work Plan and all associated reports shall be prepared in accordance with industry standards and endorsed by a Professional Engineer (P.E.) and/or Professional Geologist (P.G.) duly-licensed in South Carolina and shall set forth methods and schedules for accomplishing the following tasks:

- A. Conduct a Remedial Investigation (RI) to determine the source, nature, and extent of Contamination at the Site. The investigation should focus on Contamination that can be reasonably interpreted as originating on the Property, and not BTEX, MTBE, and other Petroleum-related Contamination that has been determined to be migrating onto the Property from off-Property, upgradient sources.
- B. Submit to the Department an RI Report (to include a Baseline Risk Assessment or other evaluation of risk to human health and the environment, as applicable) in accordance with the schedule in the

approved RI Work Plan. The Department shall review the report for determination of completion of the RI and sufficiency of the documentation. If the Department determines that the field investigation is not complete, it will send written notification of such to TPC, and TPC shall subsequently conduct additional field investigation to further determine the source, nature, and extent of Contamination. If the Department determines that the field investigation is complete, but the report is incomplete, the Department shall send to TPC a letter indicating that revision of the report is necessary. Within thirty-(30)-days of receipt of such letter from the Department, TPC shall submit a revised report addressing the Department's comments.

- C. If determined necessary by the Department based on the data gathered during the RI, conduct a Feasibility Study or other evaluation of remedial and/or removal alternatives for addressing Contamination at the Site that can be reasonably interpreted as originating on the Property. If approved by the Department, this evaluation may be combined with the RI Report.

4. TPC shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan for the Work to be performed that is consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan is submitted to the Department for information purposes only. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by TPC.

5. TPC shall inform the Department in writing (email is acceptable) at least five (5) working days in advance of the date on which TPC will commence field activities pursuant to this Contract and, if deemed necessary by the Department, shall allow the Department and its authorized representatives to take duplicates of any samples collected by TPC pursuant to this Contract.

6. Within sixty (60) days of the Execution Date of this Contract and once a quarter thereafter, TPC shall submit to the Department a written progress report that must include the following: (A) actions taken under this Contract during the previous reporting period; (B) actions scheduled to be taken in the next reporting period; (C) sampling, test results, and any other data, in summary form, generated during the previous reporting period, whether generated pursuant to this Contract or not; and (D) a description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.

7. All correspondence by either party to the other shall be in writing and deemed sufficiently given if delivered by (A) regular U.S. mail, (B) certified or registered mail, postage prepaid, return receipt requested, or (C) nationally recognized overnight delivery service company or (D) hand delivery to the other party at the address shown below or at such place or to such agent as the parties may from time to time designate in writing.

Unless otherwise directed in writing by either party, all correspondence, work plans, and reports should be submitted to:

The Department: Regan Rahn
South Carolina Department Health & Environmental Control
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201
rahnrd@dhec.sc.gov

TPC: Damian Foti
Technical Expert
Transport Pool Corporation
c/o General Electric Company
Global Operation – Environment, Health & Safety
1 River Road; Bldg 5-7W
Schenectady, NY 12345

All final work plans and reports shall include two (2) paper copies and one (1) electronic copy on compact disk.

PUBLIC PARTICIPATION

8. Upon execution of this Contract, the Department will seek public participation in accordance with S.C. Code Ann. § 44-56-740(D), and not inconsistent with the National Contingency Plan. TPC will reimburse the Department's costs associated with public participation (e.g., publication of public notice(s), building and equipment rental(s) for public meetings, etc.).

RESPONSE COSTS

9. In accordance with §§ 44-56-200 and 44-56-740, TPC shall, on a quarterly basis, reimburse the Department for Oversight Costs of activities required under this Contract. Oversight Costs include, but are not limited to: the direct and indirect costs of negotiating the terms of this Contract; reviewing Work Plans and reports; supervising corresponding work; and activities and costs associated with public participation. Payments will be due within thirty (30) days of the Department's invoice date. The Department shall provide documentation of its Oversight Costs in sufficient detail so as to show the personnel involved, amount of time spent on the project for each person, expenses, and other specific costs. Invoices shall be submitted to:

TPC: Damian Foti, Technical Expert
Transport Pool Corporation
c/o General Electric Company
Global Operation – Environment, Health & Safety
1 River Road; Bldg 5-7W
Schenectady, NY 12345

All of TPC's payments should reference the Contract number on page 1 of this Contract and be made payable to:

The South Carolina Department of Health & Environmental Control

If complete payment of the Past Costs or of the quarterly billing of Oversight Costs is not received by the Department by the due date, the Department may bring an action to recover the amount owed and all costs incurred by the Department in bringing the action including, but not limited to, attorney's fees, Department personnel costs, witness

costs, court costs, and deposition costs.

ACCESS

10. The Department, its authorized officers, employees, representatives, and all other persons performing Response Actions will not be denied access to the Site during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law). TPC and subsequent owners of the Property shall ensure that a copy of this Contract is provided to any lessee or successor or other transferee of the Property, and to any owner of other property that is included in the Site. If TPC is unable to obtain access from the Property owner, the Department may obtain access and perform Response Actions. All of the Department's costs associated with access and said Response Actions will be reimbursed by TPC.

11. The Department agrees to assist TPC, to the extent practicable, with access to off-Property groundwater monitoring wells if TPC elects to collect groundwater samples from off-Property wells as part of its investigation activities.

RESTRICTIVE COVENANT

12. If hazardous substances in excess of residential standards exist at the Property after TPC has completed the actions required under this Contract, TPC shall enter and file a restrictive covenant. Upon the Department's approval of the items outlined therein, the restrictive covenant shall be signed by the Department and representatives of TPC and witnessed, signed, and sealed by a notary public. TPC shall record this restrictive covenant with the Register of Deeds or Mesne Conveyances in Spartanburg County. The signed covenant shall be incorporated into this Contract as an Appendix. A Certificate of Completion shall not be issued by the Department until the restrictive covenant, if required, is executed and recorded. With the approval of the Department, the restrictive covenant may be modified in the future if additional remedial activities are carried out which meet appropriate clean-up standards at that time or circumstances change such that the restrictive covenant would no longer be applicable. The Department may require

TPC or subsequent owners of the Property to modify the restrictive covenant if a significant change in law or circumstances requiring remediation occurs. TPC or subsequent owners of the Property shall file an annual report with the Department by May 31st of each year detailing the current land uses and compliance with the restrictive covenants for as long as the restrictive covenant remains in effect on the Property. The report must be submitted in a manner prescribed by the Department.

OBLIGATIONS AND BENEFITS

13. Upon execution of this Contract by the Department, TPC, its signatories, parents, subsidiaries, successors and assigns shall be deemed to have resolved their liability to the State in an administrative settlement for purposes of, and to the extent authorized under 42 U.S.C. § 9613(f)(2), S.C. Code Ann. § 44-56-200, for the matters addressed in this Contract. "Matters addressed" are all Response Actions taken or to be taken at or in connection with this Site under this Contract and any subsequent amendments to this Contract, and all response costs incurred or to be incurred under this Contract and any subsequent amendments to this Contract. Further, by resolving its liability to the State for some or all of a Response Action in this administrative settlement, TPC may seek contribution to the extent authorized under 42 U.S.C. § 9613(f)(3)(B), S.C. Code Ann. § 44-56-200 from any person who is not a party to this administrative settlement. A thirty (30) day comment period shall be required prior to the Department's execution of this Contract, and shall commence upon publication of the notice of this proposed Contract in the *South Carolina State Register*.

14. Nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action, past or future, that the Department may have against a responsible party who is not a signatory to this Contract and who is not a signatory's parent, subsidiary, successor or assign.

15. Subject to the provisions of Paragraph 17, nothing in this Contract is intended to limit the right of the Department to undertake future Response Actions at the Site or to seek to compel parties to perform or pay for costs of Response Actions at the Site.

Nothing in this Contract shall in any way restrict or limit the nature or scope of Response Actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

16. Subject to the provisions of Paragraph 17, nothing in this Contract is intended to be or shall be construed as a release or covenant not to sue for any claim or cause of action that the Department may have against TPC for any matters not expressly addressed by and settled through this Contract.

17. Upon successful completion of the terms of this Contract, TPC shall submit to the Department a request for a Certificate of Completion.

Once the Department determines that TPC has successfully and completely complied with this Contract, the Department, pursuant to S.C. Code Ann. § 44-56-740(A)(5) and (B)(1), will give TPC a Certificate of Completion that provides a covenant not to sue to TPC, its signatories, parents, subsidiaries, successors and assigns for the work done in completing the Response Actions specifically covered in this Contract and completed in accordance with the approved work plans and reports. The covenant not to sue and administrative settlement for purposes of contribution protection are contingent upon the Department's determination that TPC successfully and completely complied with this Contract.

In consideration of the Department's covenant not to sue, TPC, its signatories, parents, subsidiaries, successors and assigns agree not to assert any claims or causes of action against the Department arising out of activities undertaken at the Site or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Site, except for those claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions.

18. TPC and the Department each reserve the right to unilaterally terminate this Contract. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Contract to the other party. Should TPC elect to terminate, it must submit to the Department all data generated pursuant to this Contract,

and certify to the Department's satisfaction that any environmental or physical hazard shall be stabilized and/or mitigated such that the Site does not pose a hazard to human health or the environment that did not exist prior to any initial Response Action addressing Contamination identified in this Contract.

19. The Department may terminate this Contract only for cause, which may include but is not limited to, the following:

- A. Events or circumstances at the Site that are inconsistent with the terms and conditions of this Contract;
- B. Failure to complete the terms of this Contract or the Work Plan;
- C. Failure to submit timely payments for Past Costs and/or for Oversight Costs as defined in Paragraph 9 above;
- D. Additional Contamination or releases or consequences at the Site caused by TPC, its parents, subsidiaries, successors and assigns;
- E. Providing the Department with false or incomplete information or knowingly failing to disclose material information;
- F. Change in TPC's or its parents', subsidiaries', successors' and assigns', business activities on the Property or uses of the Property that are inconsistent with the terms and conditions of this Contract;
or
- G. Failure by TPC to obtain the applicable permits from the Department for any Response Action or other activities undertaken at the Property.

20. Upon termination of this Contract under Paragraph 17 or 18, the covenant not to sue and administrative settlement for purposes of contribution protection shall be null and void. Termination of this Contract by TPC or the Department does not end the obligations to reimburse Oversight Costs already incurred by the Department and payment of such costs shall become immediately due.

21. The signatories below hereby represent that they are authorized to enter into this Contract on behalf of their respective parties. This Contract may be executed in counterparts.

THE SOUTH CAROLINA DEPARTMENT OF HEALTH
AND ENVIRONMENTAL CONTROL

BY: _____

Daphne G. Neel, Chief
Bureau of Land and Waste Management
Environmental Quality Control

DATE: _____

Reviewed by Office of General Counsel

DATE: _____

TRANSPORT POOL CORPORATION

Marian E. Whiteman
Signature

DATE: May 30, 2018

Marian E. Whiteman, Vice President - Real Estate
Printed Name and Title

APPENDIX A

Legal Description of the Property

County of Spartanburg

Tax Map Serial Number 7-12-13-310.00

ALL THAT CERTAIN piece, parcel or lot of land, situate, lying and being in the County of Spartanburg, being located at the intersection of West Main Street and South Forest Street and being more particularly described as follows:

BEGINNING at an iron pin at the southeast corner of West Main Street and South Forest Street and running thence with West Main Street N. 67-29-55 E. 202.06 feet to an iron pin; thence S. 22-30-05 E. 260 feet to an iron pin; thence S. 67-29-55 W. 191.21 feet to an iron pin; thence N. 24-53-25 W. 260.23 feet to the point of beginning. This being the same property conveyed to CNL Income Fund XIII, Ltd., a Florida limited partnership by deed of Spardee's Restaurants, Inc., a Delaware corporation, dated July 30, 1993, and recorded in the Office of the Register of Deeds for Spartanburg County, South Carolina on July 30, 1993 in Deed Book 60-H at Page 296. CNL Income Fund XIII, Ltd., a Florida limited partnership merged into CNL APF Partners, LP, a Delaware limited partnership evidenced by the merger documentation filed on April 21, 2006 in the Office of the Register of Deeds for Spartanburg County in Deed Book 85-P at Page 949.